

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

January 7, 1998

UNITED STATES OF AMERICA, Complainant,	)	
	)	8 U.S.C. § 1324a Proceeding
v.	)	OCAHO Case No. 97A00059
	)	
SDB PIZZA RESTAURANT NANUET, INC.	)	8 U.S.C. § 1324a Proceeding
D/B/A PIZZA & BREW RESTAURANT AND	)	OCAHO Case No. 97A00060
SDB HOLDING CO., INC., Respondents.	)	
	)	8 U.S.C. § 1324a Proceeding
	)	OCAHO Case No. 97A00061
UNITED STATES OF AMERICA, Complainant,	)	
	)	
v.	)	
	)	
SDB PIZZA RESTAURANT OF RYE, INC.,	)	
D/B/A PIZZA & BREW RESTAURANT OF RYE	)	
AND SDB HOLDING CO., INC., Respondents.	)	
	)	
	)	
UNITED STATES OF AMERICA, Complainant,	)	
	)	
v.	)	
	)	
PIZZA & BREW RESTAURANT, INC., D/B/A	)	
PIZZA & BREW RESTAURANT OF CROTON-	)	
ON-HUDSON AND SDB HOLDING CO., INC.,	)	
Respondents.	)	

ORDER STRIKING AFFIRMATIVE DEFENSES

These cases arise under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a (INA). A consolidated prehearing conference was held on May 5, 1997 and a scheduling order issued on May 6, 1997 which called for the respondents to file by June 4, 1997 a statement of facts in support of its affirmative defenses and for each party to initiate discovery within 30 days.

On July 10, 1997, complainant moved to strike the affirmative defenses; no response was made to that motion. Since that time there have been continuous representations that settlement had been reached or was imminent, but no actual settlement notice has been achieved. A de facto stay of more than six months has resulted. It is unclear whether any discovery was undertaken.

## DISCUSSION

Two affirmative defenses were set forth in the answers to these complaints: that respondent SDB Holding Company was not a proper party, and that respondent had attempted to turn over certain Forms I-9 but that complainant refused to accept them. Respondent in each of these cases has failed to file its statement of facts in support of its affirmative defenses as required by applicable rules<sup>1</sup> and prior order and the defenses are accordingly stricken.

The parties are further instructed to file a written status report addressing:

- a) whether any discovery has been undertaken, and
- b) when the settlement agreement will be finalized.

A prehearing conference will be held on January 20, 1998 at 10 a.m. eastern standard time to set out a further timetable and a hearing date in the event settlement is not finalized.

SO ORDERED.

Dated and entered this 7th day of January, 1998.

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Ellen K. Thomas  
Administrative Law Judge

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<sup>1</sup> Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. Pt. 68 (1997). Those rules provide that an answer should include a statement of the facts supporting each affirmative defense. 28 C.F.R. § 68.9(c)(2).

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January, 1998, I have served copies of the foregoing Order Striking Affirmative Defenses on the following persons at the addresses indicated:

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